



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30371562

Date: MAR. 21, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a fashion designer, seeks first-preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act), section 203(b)(1)(a), 8 U.S.C. § 1101(b)(1)(a). This classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three, and did not demonstrate, as required, that she has sustained national or international acclaim and is among the small percentage at the very top of her field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to noncitizens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The noncitizen must seek to enter the United States to continue work in the area of extraordinary ability and show that their entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R.

§ 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and commercial successes).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a fashion designer who intends to work in the United States at a boutique in Texas. Ultimately, the Petitioner endeavors to use eco-friendly suppliers and local domestic vendors to create environmentally sustainable clothing.

Because the Petitioner has not indicated or established that she received a major, internationally recognized award, she is required to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director concluded that the Petitioner met two criteria by establishing that material had been published about her in major media and that her work had been displayed at artistic exhibitions and showcases. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (vii). The record supports this conclusion. The Director further concluded, however, that the Petitioner did not establish that she met criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), and (viii). The Petitioner subsequently filed two motions to reopen and reconsider, which the Director dismissed. On appeal, the Petitioner asserts that the Director did not explain the reasons that she did not meet certain criteria and that the Director did not give due consideration to the evidence of record. The Petitioner contends that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v), and (viii).

As more fully discussed below, we agree with the Director’s decision. The Petitioner has not met her burden of proof to establish eligibility under each criterion.

Documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner does not address the Director’s analysis of her eligibility under this criterion. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

Documentation of the individual’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Director determined, in part, that the Petitioner did not meet this criterion because she did not establish that the association of which she is a member requires outstanding achievement as an essential condition for membership. On appeal, the Petitioner maintains that the evidence of record establishes her eligibility.

The record includes a document titled “Certificate of an Honorary Professor” from the International Environmental Chamber for her project, [REDACTED]. The record also includes letters from an individual who identifies himself as the president of the organization. The letter in response to a request for evidence explains that the mission of the organization is to find ways to reduce environmental pollution in the fields of fashion and art and indicates that the chamber is a union for fashion students. The letter also provides the following membership application requirements:

- An Autobiography;
- Background information about the candidate;
- Three passport-style photos;
- At least two recommendation letters from the members of [the organization] who have been members in good standing for at least three years. The recommendation letters should attest to the candidate’s outstanding skills and achievements in his/her professional field.

The letter further describes the three individuals who decide on a candidate’s membership as “recognized experts in the field of Art & Fashion for their achievements and artistic contributions.” This letter, however, is not corroborated by independent probative evidence to demonstrate the legitimacy of its claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Thus, the Petitioner has not met her burden to establish that she meets the requirements of 8 C.F.R. § 204.5(h)(3)(ii).

Evidence of the individual’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner asserts that the Director ignored evidence submitted to demonstrate her eligibility under this criterion. She cites evidence related to her collaboration with the director of a fashion brand from her country who presented a collection during [REDACTED] 2015. A letter from the brand’s director describes her admiration for the Petitioner’s skills and understanding of the business aspect of the fashion industry. The author further describes the Petitioner’s role as the project advisor for the collection to be showcased in [REDACTED] crediting her organizational and creative talents for making the showcase a success. The author states,

Thanks to a successful showcase in [REDACTED] which our company owns [sic] to [the Petitioner], our brand received international recognition by acquiring many international clients. Our Instagram following has grown significantly since 2015. Having [the Petitioner] as a Project Advisor for the spring-summer 2016 collection undoubtedly played a critical role in expanding our Instagram following and the brand’s recognition. [The Petitioner’s] original designs created for the spring-summer 2016 collection directly influenced the success of [the] exhibition.

Impressed by [the Petitioner's] inimitable work, I requested her permission to use her unique models for the development of my collections, to which she luckily agreed. [The Petitioner's] exclusive patterns have inspired some of the pieces I created for [the brand] that have been profitably selling across Kazakhstan and the neighboring countries. Therefore, her original contributions were of major significance to [the brand] and the fashion industry in Kazakhstan.

While the evidence of record serves to demonstrate that the Petitioner's collaboration with this fashion brand positively impacted its business, the record does not contain evidence showing how her designs or creations significantly impacted the field of fashion design. While the director of this brand may anecdotally state that the Petitioner's original contributions were of major significance to the fashion industry in her native country, the record does not contain probative evidence to support that claim.

Similarly, a letter from the previous winner of a major fashion design and competition show in the United States asserts that the Petitioner's internship at her boutique in [redacted] Texas, positively impacted her small business. The letters from the dean and a division chair at a Texas community college that the Petitioner attended generally state that she had a positive impact on students by motivating them and sharing her skills, and they show appreciation for her involvement in competitions at the school. Like the evidence of the Petitioner's collaboration with the fashion brand, these letters serve to illustrate the Petitioner's positive impact on a small business and an art program at a community college. This evidence does not, however, show how the Petitioner's involvement with these entities constitutes contributions of major significance to the field of fashion design. The Petitioner has not shown that she meets the requirements of 8 C.F.R. § 204.5(h)(3)(v).

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.
8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner reiterates the evidence of her positive impacts on the fashion brand, the boutique, and the community college. She does not provide—and the record did not previously include—supplementary evidence showing how the fashion brand, the boutique, and the community college are organizations or establishments that have distinguished reputations. While [redacted] [redacted] may be an internationally known annual event, the Petitioner has not provided evidence to sufficiently demonstrate that the fashion brand with which she collaborated to showcase at the event is a brand of distinguished repute. Participation at the event, alone, does not necessarily confer distinction upon the participant.

Likewise, the fact that the owner of the boutique won a nationally known cable television show competition does not confer distinction on her small business. The record shows that her boutique appeared in local media, in part, because she was originally from the area where she opened the shop. The record does not contain evidence demonstrating that this boutique enjoys special distinction beyond its immediate locality, nor does the record contain evidence showing that the community college enjoys significant renown among the many other colleges in the region. Although the Petitioner may have been a positive presence at these organizations, the record does not demonstrate that she performed in critical roles for organizations or establishments that have a distinguished

reputation. The Petitioner has not met her burden to establish that she meets the requirements of 8 C.F.R. § 204.5(h)(3)(viii).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or evidence that meets at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.